

NYT 8072
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSETTA CAMPBELLE,

Plaintiff,

-against-

THE NEW YORK CITY TRANSIT AUTHORITY,

Defendant.
-----X

Index No.: 07 CV4442

**JOINT PRE-TRIAL
ORDER**

I. TRIAL COUNSEL:

For Plaintiff:

Joseph Fleming, Esq.
Joseph Fleming, Esq., P.C.
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Tel. 212-385-8036 Fax. 212-406-2045

For Defendant:

Trina L. Moore, Esq.
Armienti, DeBellis, Gugliemo & Rhoden, LLP
44 Wall Street
New York, NY 10005-2401
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II. JURISDICTION:

The Jurisdiction of the Court is invoked pursuant to 28 USC 1322, Diversity of Citizenship. Plaintiff is a resident of the State of Virginia and Defendant is an agency of the City of New York, located in the State of New York. The amount is controversy exceeds \$75,000.00.

III. PLAINTIFF'S CONTENTIONS:

a. Plaintiff contends that Defendant was negligent in the care and maintenance of its bus, allowing a dangerous condition to exist there, which dangerous condition caused the Plaintiff to fall and suffer injury.

b. Plaintiff further contends that Defendant failed to inspect and maintain its buses.

c. Plaintiff further contends that Defendant had a duty to inspect and maintain its buses so as to insure against the existence of dangerous conditions and that had Defendant inspected and maintained its buses, the dangerous condition that caused Plaintiff's injury, would not have existed.

d. Plaintiff further contends that Defendant knew or through the reasonable exercise of care, should have known, that there existed a dangerous condition consisting of a slippery surface on the bus' rear exit, that if left uncorrected, would cause injury to members of the general public invited to ride.

e. Plaintiff further contends that her injuries were the direct and proximate cause of the Defendant's negligence and through no negligence on the part of Plaintiff whatsoever.

IV. DEFENDANT'S CONTENTIONS:

a. Defendant contends that the plaintiff did not provide notice to the defendant of any alleged condition on the stairs of the bus.

b. Defendant further contends that if there were an alleged condition on the stairs of the bus, the plaintiff failed to see what there was to be seen and created her own injuries.

c. Defendant further contends that the plaintiff could have avoided the injuries and damages alleged herein.

d. Plaintiff failed to take any or sufficient action, or such action as was necessary, to mitigate

of minimize the injuries and damages alleged or the conditions that allegedly gave rise to those purported injuries or damages.

- V. The case is to be tried with a Jury.
- VI. The parties have not consented to trial of the case before a Magistrate Judge.
- VII. The parties have not agreed to any statement of fact or law.
- VIII. WITNESSES:

Plaintiff's Witnesses:

- a. Rosetta Campbelle, Plaintiff
- b. Wayne Campbelle, Plaintiff's husband - witnessed the accident and its impact upon Plaintiff thereafter
- c. Dr. Edwin Fuentes - as to Plaintiff's injuries.

Defendant's Witnesses:

- a. Bus Operator Steven Sabb, who is a bus operator for the New York City Transit Authority will testify in person;
- b. Raz Winiarsky, M.D., will testify in person regarding the March 18, 2008 independent medical examination.

IX. DEPOSITION TESTIMONY:

- a. Deposition Transcript of Steven Sabb, Defendant's Employee
 - 1. Page 7 at Lines 2-25
 - 2. Page 8 at Lines 2-25
 - 3. Page 10 at Lines 10-25
 - 4. Page 12 at Lines 20-25
 - 5. Page 13, at Lines 2-25
 - 6. Page 17 at Lines 13-25
 - 7. Page 19 at Lines 6-25
 - 8. Page 20 at Lines 4-25
 - 9. Page 21 at Lines 2-25
 - 10. Page 26 at Lines 10-13
 - 11. Page 27 at Lines 18-22

12. Page 32 at Lines 5-23
13. Page 35 at Lines 11-24

b. Deposition testimony of the plaintiff Rosetta Campbelle to be used by the defendant:

1. Page 12, Lines 2-23
2. Page 13, Lines 2-22
3. Page 15, Lines 15-24
4. Page 16, Lines 9-25
5. Page 17, Lines 2-4, and Lines 12-25
6. Page 18, Lines 2-15, and Lines 18-25
7. Page 19, Lines 4-25
8. Page 20, Lines 2-16
9. Page 21, Lines 3-14
10. Page 22, Lines 3-5
11. Page 23, Lines 24-25
12. Page 24, Lines 2-3
13. Page 26, Lines 22-25
14. Page 27, Lines 5-25
15. Page 28, Lines 2-6
16. Page 38, Lines 5-14
17. Page 39, Lines 15-23
18. Page 40, Lines 3-5
19. Page 42, Lines 3-17
20. Page 43, Lines 6-12

c. Statutory Hearing testimony of the plaintiff Rosetta Campbelle to be used by the defendant:

1. Page 8, Lines 9-11
2. Page 12, Lines 2-11
3. Page 14, Lines 15-17
4. Page 15, Lines 15-25
5. Page 16, Lines 2-4, 12-24
6. Page 19, Lines 14-15

X. EXHIBITS:

a. **Plaintiff's Exhibits:**

1. Plaintiff's Medical Records
2. Transcript of Plaintiff's 50-H Hearing

3. Transcript of Deposition of Steven C. Sabb
4. Defendant's Trip Sheet for 6/23/06 for Bus Driven by Steven C. Sabb
5. Defendant's OVCR for 6/23/06 prepared by Steven C. Sabb
6. Recording of call from Steven C. Sabb to Command Center on 6/23/06
7. OVCR Reports prepared by Steven C. Sabb for six (6) month period preceding 6/23/06
8. Blind form prepared by Steven C. Sabb on 6/23/06

b. **Defendant's Exhibits:**

1. Plaintiff's Deposition Transcript dated 3/18/08; and
2. Plaintiff's Statutory Hearing Transcript dated 1/3/07

XI. JURY VERDICT:

The parties consent to a less than Unanimous Verdict.

Dated: New York, New York
June 9, 2008

CONSENTED TO:

Joseph Fleming, Esq., P.C.
Attorney for Plaintiff

By: _____
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SO ORDERED:

HONORABLE LEONARD B. SAND
United States District Judge